U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KELLEY A. SHEPHERD and DEPARTMENT OF THE INTERIOR, MESA VERDE NATIONAL PARK, CO

Docket No. 98-170; Submitted on the Record;
Issued August 2, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issue is whether appellant has met her burden of proof to establish that she sustained a recurrence of disability on September 27, 1996 causally related to her accepted October 24, 1995 employment injury.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to meet her burden of proof to establish that she sustained a recurrence of disability on September 27, 1996 causally related to her accepted October 24, 1995 employment injury.

On October 24, 1995 appellant, then a park ranger, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her lower back while lifting approximately 25 pounds of hay from the ground and above her head. Appellant stopped work on October 25, 1995.

By letter dated December 12, 1995, the Office of Workers' Compensation Programs accepted appellant's claim for low back strain.

On October 3, 1996 appellant filed a claim (Form CA-2a) alleging that she sustained a recurrence of disability on September 27, 1996 accompanied by medical evidence. Appellant did not stop work.

By letter dated November 18, 1996, the Office advised appellant to submit medical and factual evidence supportive of her recurrence claim. By letter of the same date, the Office advised the employing establishment to submit factual evidence.

In a January 14, 1997 letter, the Office advised Dr. Dianna L. Fury, a chiropractor and appellant's treating physician, that it had received and reviewed the evidence submitted in support of appellant's recurrence claim. The Office further advised Dr. Fury that, since she was appellant's treating physician and that a chiropractor was not considered to be a physician under the Federal Employees' Compensation Act, clarification was needed regarding appellant's

condition and its relationship with her October 24, 1995 employment injury. The Office then advised Dr. Fury to respond to specific questions regarding appellant's back condition.

By decision dated February 25, 1997, the Office found the medical evidence of record insufficient to establish that appellant sustained a recurrence of disability on September 27, 1996 causally related to her October 24, 1995 employment injury.[1]

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury. This burden includes the necessity of furnishing medical evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.[2]

In this case, appellant has not submitted rationalized medical evidence addressing whether her current back condition was caused by the accepted October 24, 1995 employment injury.

The record reveals unsigned notes covering the period December 14, 1995 through November 18, 1996, regarding appellant's chiropractic treatment. These treatment notes lack probative value because they were not signed by a physician.[3]

The record further reveals Dr. Fury's September 26, 1996 prescription, referring appellant to Dr. Michael R. Treinen, a chiropractor. The record also reveals Dr. Fury's November 15, 1996 medical report, providing that appellant sustained a back strain while working and that it was believed that there was no medical necessity to take x-rays at that time. She noted that it was medically necessary to send appellant to Dr. Treinen. Dr. Fury's prescription and report failed to address a causal relationship between appellant's current back condition and her accepted October 24, 1995 employment injury. Therefore, they are insufficient to establish appellant's burden.

In addition, the record reveals Dr. Treinen's December 11, 1996 report, revealing his findings on physical examination and appellant's medical treatment.[4] Under section 8101(2) of the Act,[5] "[t]he term 'physician' includes chiropractors only to the extent that their reimbursable

[1] The Board notes that, subsequent to its February 25, 1997 decision, the Office received additional medical evidence. The Board, however, cannot consider evidence that was not before the Office at the time of the final decision; *see* 20 C.F.R. § 501.2(c)(1).

[2] *Louise G. Malloy*, 45 ECAB 613 (1994); *Lourdes Davila*, 45 ECAB 139 (1993); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

[3] *Jerre R. Rinehart*, 45 ECAB 518 (1994); *James A. Long*, 40 ECAB 538 (1989).

[4] The Board notes that Dr. Treinen's report was also submitted in response to the Office's January 14, 1997 letter to Dr. Fury.

[5] 5 U.S.C. §§ 8101-8193.

services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation of the spine as demonstrated by x-ray to exist and subject to regulation by the Secretary."[6] If a chiropractor's reports are not based on a diagnosis of subluxation as demonstrated by x-ray to exist, they do not constitute competent medical evidence to support a claim for compensation.[7] Dr. Treinen's report failed to diagnose subluxation by x-ray. Inasmuch as Dr. Treinen, a chiropractor, has failed to diagnose subluxation of the spine by x-ray, he does not qualify as a physician under section 8101(2) of the Act.[8] Therefore, his report does not constitute competent medical evidence to support a claim for compensation.[9]

Because appellant has failed to submit rationalized medical evidence establishing that her current back condition was causally related to her accepted October 24, 1995 employment injury, the Board finds that appellant has not satisfied her burden of proof.

The February 25, 1997 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
August 2, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member

[6] 5 U.S.C. § 8101(2); *see also* 20 C.F.R. § 10.400(a); *Robert J. McLennan*, 41 ECAB 599 (1990); *Robert F. Hamilton*, 41 ECAB 431 (1990).

[7] *Loras C. Dignann*, 34 ECAB 1049 (1983).

[8] *Milton E. Bentley*, 32 ECAB 1805 (1981).

[9] *Theresa K. McKenna*, 30 ECAB 702 (1979).